

EXHIBIT A

HOME AMERICAIR OF CALIFORNIA/HOME AMERICAIR

CORPORATE INTEGRITY AGREEMENT

I. PREAMBLE

A. The parties to this Corporate Integrity Agreement ("Agreement") are the United States Department of Health and Human Services, Office of the Inspector General ("HHS/OIG" or "OIG"), Home Americair of California ("HAC") and Home Americair ("HA"), referred to herein collectively as "HAC/HA." This Agreement becomes effective upon the date of the last signator hereto ("effective date").

B. HAC is a California corporation with its principal offices located at 1301 Dove Street, Newport Beach, California. HAC has approximately 30 independently owned franchises nationwide and has had as many as 45 independently owned franchises nationwide, known and referred to herein as "Americair franchises," which lease and rent oxygen concentrators, portable oxygen tanks, and other respiratory equipment ("oxygen equipment") to patients for home use. HAC also has a wholly-owned facility located at 12062 Valley View Street, Garden Grove, California, referred to as "the Garden Grove facility," which, like the Americair franchises, supplies oxygen equipment to patients for home use. The parent corporation and the Garden Grove facility are singularly and collectively referred to herein as "HAC." HAC has supplied oxygen equipment to patients through

its Garden Grove facility since December 1986 and has franchised the business of supplying such oxygen equipment since August 1987.

C. HA is a California corporation with its principal offices located at 1301 Dove Street, Newport Beach, California. HA acts as a billing agent for the Garden Grove facility and the Americair franchises and submits bills on their behalf to the Medicare and Medicaid programs, along with all other payors.

D. HAC/HA has entered into a settlement agreement with the United States to address civil claims against HAC/HA for certain conduct allegedly implicating the False Claims Act, including but not limited to conduct described in paragraphs 7 through 10 of the Preamble of that Settlement Agreement and in the civil action United States Ex. rel. Frisco and Jones v. Home Americair of California, Inc., et al., No. CV 93-7186-KMW (SHx) (C.D. Calif.).

E. HAC/HA has developed a Compliance Program with respect to its provision of oxygen equipment, both through the Garden Grove facility and through the Americair franchises. This Compliance Program is described in HAC/HA's Compliance Manual. HAC/HA agrees to follow its Compliance Program, as presently formulated and as updated and improved when appropriate, and to take other action, as necessary and as specified herein, to assure the OIG and the Health Care Financing Administration ("HCFA"), that HAC/HA possesses the high degree of business

honesty and integrity required of Medicare and Medicaid suppliers. HAC/HA also agrees to take all efforts to be in compliance with this Agreement and all laws and regulations governing a supplier's participation in Medicare, Medicaid, and Federal health care programs,<sup>1</sup> including, but not limited to: Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ddd(1997) (the Medicare Act); Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v(1997) (the Medicaid Act); the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b); the False Claims Act, 31 U.S.C. §§ 3729-33; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; and all applicable implementing regulations (hereafter "Applicable Laws").

## II. REQUIRED ELEMENTS OF THE COMPLIANCE PROGRAM

### A. Term and Scope

1. This Agreement shall be in force and effect for five (5) years (the "Term").

2. HAC/HA has developed a Compliance Program, which is hereby incorporated by reference into this Agreement, and HAC/HA hereby agrees to implement it within thirty (30) days of the effective date. HAC/HA remains free to modify the Compliance

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<sup>1</sup> This term, as used throughout this Agreement, is defined at 42 U.S.C. § 1320a-7b(f).

Program, as may be necessary to enhance its compliance efforts, and shall provide the OIG with notice of any significant modifications of the Compliance Program within thirty (30) days after such modifications are implemented. Any such modifications, however, shall be consistent with the terms of this Agreement.

3. Within sixty (60) days of the effective date, unless a different period is specifically provided elsewhere in this Agreement, HAC/HA will implement and maintain the requirements specified herein.

4. The HAC/HA Compliance Plan and the requirements of this Agreement will cover all HAC/HA owners, directors, officers, employees, agents, and independent contractors. Except as otherwise specified in this Agreement, HAC/HA will also apply the terms of this Agreement to the activities of the owners, directors, officers, employees, agents, and independent contractors of every Americair franchise. The individuals listed in this paragraph shall be collectively referred to as "covered individuals" in this Agreement.

#### **B. Corporate Integrity Program Management**

5. Compliance Committee. As set forth in the Compliance Program, HAC/HA's Board of Directors retains ultimate

responsibility for oversight of HAC/HA compliance activities and has undertaken considerable responsibility for franchise compliance activities. The Board will appoint a Compliance Committee, which will at least consist of the President of HAC/HA, a member of the Board who is involved in the day-to-day operations of HAC/HA, a senior individual responsible for the billing operations of HAC/HA, and the Compliance Officer. The Compliance Committee will have ultimate responsibility for ensuring HAC/HA's compliance with this Agreement and all Applicable Laws. The Compliance Committee shall oversee the activities of the Compliance Officer, which are described below.

6. Compliance Officer. Within thirty (30) days of the effective date, HAC/HA will hire a Compliance Officer, whose primary responsibility will be the day-to-day oversight and implementation of the Compliance Program. The Compliance Officer will report to the Compliance Committee. He or she shall, however, have sufficient authority and autonomy to implement and comply with the requirements stated in this Agreement, and shall have open access to all other senior management. The Compliance Officer will be responsible for maintaining and revising corporate compliance policies and procedures and ensuring that all HAC/HA and Americair franchise operations are conducted in conformity with the policies and procedures established in HAC/HA's Compliance Manual and with all Applicable Laws. The

duties of the Compliance Officer shall include: (a) review of all Applicable Laws pertaining to the provision of oxygen equipment in the home and the billing for such equipment to Medicare, Medicaid, and Federal health care programs, and the revision of HAC/HA's policies and procedures to conform to changes in Applicable Laws; (b) ensuring that all appropriate individuals have received the requisite training; (c) setting up procedures for accepting and reviewing complaints about compliance-related issues; (d) working with the Compliance Liaisons from the Americair franchises to ensure that all appropriate and necessary compliance-related activities are being carried out at the Americair franchises; and (e) ensuring that this Agreement is implemented, including, but not limited to ensuring that all reporting requirements, as specified herein, are met.

7. Compliance Oversight of Americair Franchises.

While each of the Americair franchises retains the ultimate responsibility for ensuring compliance with all Applicable Laws in regard to the activities conducted by that franchise, HAC/HA agrees to use all available resources to ensure that each Americair franchise complies with the applicable provisions of this Agreement and to provide training and oversight. In order to accomplish this, HAC/HA shall require each of the Americair franchises to appoint a Compliance Liaison, to serve as the

coordinator for compliance activities at each franchise. The Compliance Liaison shall be responsible for serving as a liaison between the management of each Americair franchise and the Compliance Officer of HAC/HA, regarding compliance-related activities. The Compliance Liaison's responsibilities shall include: (a) disseminating the compliance manual, all compliance-related policies and procedures, and training materials provided by the Compliance Officer; ensuring that all franchise owners, employees, agents, and independent contractors are familiar with the compliance-related policies and procedures; and assisting the process of ensuring that the certifications as required in paragraph 11 are completed; (b) reporting to the Compliance Officer all concerns/complaints reported to the franchise management or the Compliance Liaison, in regard to possible violations of compliance-related policies and procedures or Applicable Laws (however, covered individuals shall have the unfettered right to contact the Compliance Officer directly via a toll-free number, without any reporting required to any individual within the franchise); (c) maintaining all compliance-related documentation; and (d) assisting the Compliance Officer with compliance-related audit activities, as appropriate.

### C. Compliance Policies and Standards of Conduct

8. HAC/HA agrees to continue to develop and refine compliance policies and procedures. These will also be codified in more detail in the HAC/HA Compliance Manual, the current version of which is incorporated herein by reference. The Compliance Officer, or other HAC/HA personnel or legal advisors, at their discretion and as necessary, will consult with HCFA, the Medicare Durable Medical Equipment Regional Carriers ("DMERCs"), and the National Supplier Clearinghouse, when developing policies and procedures relating to the submission of Medicare claims. Such policies shall, at a minimum, provide:

- a. That, as specified in 42 U.S.C. § 1320a-7b(b) and the accompanying regulations, no remuneration will be provided, offered, solicited, or received for purposes of obtaining or providing referrals for any item or service.
- b. That Certificates of Medical Necessity ("CMNs") correctly reflect the circumstances under which the oximetry tests are conducted, for example: whether the tests were given while the individual was at rest, during exercise, or during sleep.
- c. That each CMN is filled out by the appropriate individuals, as required by 42 U.S.C. § 1395m(j)(2), and that the physician's original signature is on the CMN.



- d. That oxygen equipment is provided only to individuals who need it, and picked up and no longer billed for once there is no longer such a need.
- e. That retesting shall be completed in a timely manner in accordance with the requirements of the Medicare program, and by appropriate individuals.
- f. That there shall be a request, in writing, that each laboratory performing a qualifying test, send the lab reports and pulse oximetry lab strips directly to the physician with a copy to the appropriate franchise. All reasonable efforts shall be taken to ensure that the franchise obtains copies of the actual lab results and strips. There shall be no attempt by any of the covered individuals to interpret the values on the lab strips, as this is the responsibility of the physician and the entity conducting the testing.
- g. That the billing arrangement between HAC/HA and the franchises complies with 42 U.S.C. § 1395u(b)(6), 42 C.F.R. § 424.80.
- h. That all reasonable efforts are made to collect co-payments and documented, unless the beneficiary supplies sufficient information to establish that a waiver is appropriate due to an inability to pay.
- i. That there is full compliance with the laws and

regulations regarding physician ownership.

9. HAC/HA also agrees to adopt policies that will require any covered individual to obtain legal review of any agreement or contract entered into with any individual or entity who is in a position to provide or receive referrals.

10. HAC/HA also agrees to establish written Standards of Conduct for itself and each Americair franchise, to maintain the business honesty and integrity required of a Medicare and Medicaid supplier, and ensure that all conduct is in strict compliance with all Applicable Laws. These Standards shall apply to every covered individual. They shall specify the organization's commitment to adhering to the Applicable Laws, policies and procedures set forth herein and in the Compliance Manual, and provide for a plan for disciplinary action, including termination of employment or the contract, should a covered individual fail to meet the Standards of Conduct. In addition, HAC/HA and all franchises shall communicate to all covered individuals that failure to report any suspected violations of Applicable Laws or this Agreement, including the policies and procedures set forth herein and the compliance manual, shall be a basis for disciplinary action.

#### D. Annual Certifications

11. The Compliance Manual shall be circulated to all covered individuals. Each such individual will be required to review the policies in the Compliance Manual and to sign a certification that the policies and procedures contained therein have been reviewed and understood and that the individual will abide by said policies and procedures. The Compliance Manual will be circulated and the certifications will be obtained from all covered individuals within sixty (60) days of the effective date. All new hires or contractors will be required to review the Compliance Manual and to execute the required certification within thirty (30) days of the date of the contract or employment. Each covered individual will be required to review the compliance manual annually and to sign a new certification that the policies and procedures contained therein have been reviewed and will be followed. The Americair franchise Compliance Liaisons will be expected to provide HAC/HA with copies of all certifications and an annual report certifying that each covered individual has completed the initial and annual review of the Compliance Manual.

12. As part of each Annual Report to the OIG, as discussed below in paragraphs 27-28, HAC/HA will submit a statement by the Compliance Officer that he/she has verified:

(a) that the signed certifications described above are being obtained and maintained for each covered individual; (b) that each covered individual has signed the required certifications; and (c) that the annual report and certifications have been received from the Compliance Liaison at each Americair franchise.

#### **E. Notice to Employees**

13. HAC/HA agrees to post in common work areas in its locations in Newport Beach and Garden Grove a Notice (the form of which will be submitted to the OIG in advance of posting) that details HAC/HA's commitment to comply with the policies and procedures in its Compliance Manual and all Applicable Laws in the conduct of its business. Such Notice will be placed in a prominent place accessible to all HAC/HA employees. HAC/HA will also distribute said Notice to all of the Americair franchises, with instructions for the posting of said Notice in a prominent place accessible to all franchise employees.

14. When there are changes in compliance-related policies or Applicable Laws, HAC/HA will distribute notice of said changes to all HAC/HA employees affected by the changes and will post notice of said changes in a prominent place accessible to all HAC/HA employees. HAC/HA will also distribute notice of said changes to all the Americair franchises, with instructions

for the distribution and posting of the notice regarding said changes in a place accessible to franchise employees.

**F. Hot Line**

15. Within sixty (60) days of the effective date, HAC/HA will establish and maintain a tollfree "Hot Line" telephone number for reporting of suspected misconduct to the Compliance Officer by any covered individual. HAC/HA agrees to post a notice regarding the use of the Hot Line in common work areas in each of its locations and identify telephone number to be used for such reporting. HAC/HA also agrees to distribute the same notice regarding the Hot Line to the Americair franchises, with instructions for the posting of said notice in an accessible location and the distribution of said notice to all franchise employees and other covered individuals. Such notice shall explicitly state that the call may be anonymous.

16. As part of the Annual Reports required by this Agreement, HAC/HA shall provide a list of the number and type of calls made to the Hot Line during the previous year. With respect to any Hot Line calls that allege possible violations of the Compliance Program policies and procedures or the Applicable Laws which may have an impact on Medicare, Medicaid, or other Federal health care programs, HAC/HA shall include information in

its Annual Report concerning the nature of the allegations, a description of the action taken in response, the results of any internal investigation, and a description of any corrective action taken by HAC/HA. HAC/HA shall not, however, be required to provide information identifying the individuals reporting the suspected violations if they have requested anonymity.

#### G. Training and Education

17. HAC/HA shall maintain an ongoing training and education program designed to ensure that each HAC/HA owner, officer, director, and employee is aware of and understands the compliance-related policies and procedures and the Applicable Laws, and his or her duty to ensure compliance with such policies and procedures and laws. Such training and education will contain information on the potential consequences of any failure to achieve and maintain compliance with the compliance-related policies and procedures and the Applicable Laws, including the range of disciplinary actions (which includes termination) that may be taken in the event of such failure.

18. Within ninety (90) days of the effective date, each owner, officer, director, and employee of HAC/HA shall receive at least four (4) hours of Compliance Program training. All new HAC/HA employees shall receive such training within

thirty (30) days of joining HAC/HA, unless the new employee has duties or responsibilities that include coding or billing, then that employee shall either receive the appropriate training within ten (10) days of joining HAC/HA or shall only perform such duties under the direct supervision of someone who has had the appropriate training. Thereafter, there shall be supplemental compliance training of at least four (4) hours, conducted on an annual basis. As part of this training, each individual shall be advised that compliance is a condition of their employment. A schedule and subject outline for the training and education program shall be maintained by HAC/HA and shall be provided to the OIG with the Annual Report required herein.

19. The same training and education requirements set forth in paragraphs 17 and 18 shall also apply to the owners, officers, directors, and employees of each Americair Franchise. Within sixty (60) days of the effective date, HAC/HA shall hold a training session for Americair Franchise Compliance Liaisons, in order to assist the Compliance Liaisons with the provision of training and education for employees of the Americair franchises. HAC/HA shall make available the training and education materials prepared for HAC/HA to the Americair franchises for use by the Americair franchises in providing training and education to their staffs. HAC/HA shall obtain certifications from each Americair Franchise Compliance Liaison that each individual covered under

this paragraph has received the required training and education (the first such training shall be completed within one hundred and twenty days (120) of the effective date of this Agreement), and shall attach to the certification a list of attendees. All new franchise employees shall receive training within thirty (30) days of employment, unless the new employee has duties or responsibilities that involve billing or coding, then that employee shall either receive the appropriate training within ten (10) days of joining HAC/HA or shall only perform such duties under the direct supervision of someone who has had the appropriate training. If a new franchise is started, HAC/HA shall ensure that the training is completed within sixty (60) days. These certifications and lists shall be provided to the OIG in the annual report.

#### **H. Limitations on Hiring**

20. HAC/HA and all the Americair franchises shall not employ, with or without pay, or enter into a contract or business relationship with any individual or business entity whom HAC/HA or the Americair franchise knows or should have known: 1) has been convicted of a criminal offense which would trigger an exclusion pursuant to 42 U.S.C. § 1320a-7(a) or 42 U.S.C. § 1320a-7(b), unless that individual or entity has been reinstated; or 2) is



listed by a federal agency as currently suspended, debarred, excluded or otherwise ineligible for federal program participation. In order to carry out this requirement, HAC/HA agrees to make reasonable inquiry into the status of any potential employee, agent, or contractor, including review of HHS/OIG Cumulative Sanctions Report (accessible on the OIG's website at: [HTTP://WWW.DHHS.GOV/PROGORG/OIG](http://www.dhhs.gov/progorg/oig)) and the General Services Administrative ("GSA") List of Parties Excluded from Federal Procurement and Non-Procurement Programs (accessible on the Internet at: [HTTP://WWW.ARNET.GOV/EPLS](http://www.arnet.gov/epl)). HAC/HA also agrees to require each Americair franchise to make reasonable inquiry to ensure that the requirements of this paragraph are met.

21. HAC/HA shall not be required to terminate the employment of individuals who are charged with a criminal offense related to health care, or proposed for debarment or exclusion during their employment with HAC/HA, provided, however, that HAC/HA will immediately remove such individual from direct responsibility for or involvement in any Medicare, Medicaid, or Federal health care program until the resolution of such criminal charges or proposed debarment or exclusion. If the individual is subsequently convicted, debarred or excluded, HAC/HA will terminate its employment relationship and/or affiliation with that individual. For purposes of this Agreement, the term "convicted" shall have the meaning given in 42 U.S.C. § 1320a-7(i).

## I. Compliance Audits

22. As part of its regular compliance activities, HAC/HA agrees to perform annual audits pertaining to the provision of and billing for oxygen equipment to Medicare beneficiaries and Medicaid recipients. HAC/HA agrees to implement and assume the cost of all audits and reviews as set forth below. HAC/HA agrees to contract with an appropriately trained individual or individuals, such as an accounting or law firm, who has expertise in Medicare and Medicaid reimbursement and medical necessity to perform an audit as outlined below:

a) Audit on an annual basis all Medicare and Medicaid claims submitted on behalf of the Garden Grove facility. Such audit shall be based upon a statistically valid sample and shall include, but not be limited to: (1) a review of the circumstances of those qualifying tests performed after the effective date of this Agreement, to ensure that they were performed by an appropriate individual, as specified in this Agreement and the applicable regulations; (2) an inquiry into the medical necessity of the oxygen being supplied to Medicare beneficiaries and Medicaid recipients, including a review of the laboratory strips and laboratory reports which serve as a basis for those qualifying Medicare beneficiaries and Medicaid recipients who have been tested on or after the

effective date of this Agreement; (3) a review of those CMNs completed after the effective date of this Agreement, to ensure that these forms are being completed in accordance with applicable Medicare or Medicaid instructions; and (4) a review of the billing function to ensure that (i) all required documentation is being submitted by the franchises to the billing office; and (ii) that the information on the hard-copy CMNs are being properly transmitted electronically to the Medicare and Medicaid programs (as applicable). If the audit of the statistically valid sample of claims reveals that an overpayment has occurred, HAC/HA agrees to repay such overpayments. In determining whether an overpayment has occurred, nothing in this Agreement shall be construed to modify the Medicare provisions concerning limitation of liability found in 42 U.S.C. § 1395pp. To the extent that the auditors determine that any overpayments would not have been repaid to the Medicare or Medicaid programs in accordance with HAC/HA's normal billing policies, procedures, and actual practices,<sup>2</sup> as determined through the audit, the overpayments shall be projected to the relevant universe of claims for that year and repaid to the Medicare or Medicaid programs;

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<sup>2</sup> This shall be construed to mean that HAC/HA is diligently adhering to its stated policies and procedures.

b) Audit, on a rotating basis, the Medicare and Medicaid claims of all remaining franchises that have not agreed to be audited annually. The audit shall be based upon a statistically valid sample. Such audit shall be conducted on at least twenty percent (20%) of the franchises each year; however, all franchises shall be audited within the term of this Agreement, regardless of when they became a franchise. The first annual audit shall cover a one year period. Subsequently, the audits shall cover the previous two year period. The audits shall include, but not be limited to: (1) a review of the circumstances of those qualifying tests performed after the effective date of this Agreement, to ensure that they were performed by an appropriate individual, as specified in this Agreement and the applicable regulations; (2) an inquiry into the medical necessity of the oxygen being supplied to Medicare beneficiaries and Medicaid recipients, including a review of those laboratory strips and laboratory reports which serve as a basis for qualifying Medicare beneficiaries and Medicaid recipients who have been tested on or after the effective date of this Agreement; (3) a review of those CMNs completed after the effective date of this Agreement, to ensure that these forms are being completed in accordance with applicable Medicare or Medicaid

instructions; and (4) a review of the billing function to ensure that: (i) all required documentation is being submitted by the franchises to the billing office, and (ii) that the information on the hard-copy CMNs are being properly transmitted electronically to the Medicare and Medicaid programs (as applicable). The results of the audit shall be shared with the appropriate DMERC for determination of the applicable overpayment;

c) review on an annual basis, the policies adopted by HAC/HA and the Americair franchises to ensure they are consistent with all applicable Medicare and Medicaid statutes, regulations, and program manual requirements;

d) conduct a review to ensure this Agreement has been properly implemented; and

e) with respect to each audit, conduct some interviews with respiratory therapists, individuals responsible for marketing and billing, and any other appropriate personnel. The choice of who shall be interviewed shall be made by the auditors. These interviews will be designed to determine whether the applicable laws, regulations, and policies, are being followed.

23. A comprehensive report based upon the audit findings shall be prepared and submitted with the Annual report. The Compliance Officer and the firm that undertook the review shall also sign a certification specifying the scope of the audit, which shall be included in the Annual Report. HAC/HA shall make all audit related documents and work papers available to the OIG upon request. Failure to perform such an audit and review in accordance with these terms will be considered a breach of this Agreement and, in addition to the consequences set forth herein for such a breach, may also result in the OIG or its designee conducting an audit at the expense of HAC/HA.

If the annual audit indicates lapses in compliance with compliance-related policies and procedures or Applicable Laws, all necessary corrective action shall immediately be taken and shall be documented in writing. To the extent such audits reflect lapses in compliance with respect to the franchises, the Compliance Officer shall make recommendations to the appropriate Compliance Liaisons for any corrective actions which may be necessary. Such recommendations shall be included in the Annual Report, as well as an affirmation concerning whether they were implemented.

**J. Duty to Investigate, Report, and Correct**

24. If, based upon the compliance activities and audits described above, or upon information received from any other

source that was not known prior to the effective date of this Agreement, HAC/HA determines that there are reasonable grounds to suspect that a violation of: (a) compliance-related policies and procedures; (b) Applicable Laws; or (c) this Agreement; has occurred, HAC/HA will conduct an appropriate internal inquiry. HAC/HA will make the initial determination of whether there are reasonable grounds to conclude that a material violation of the Applicable Laws governing Medicare, Medicaid, or Federal health care programs has occurred. A material violation is one which: (a) has, or has the potential to have, a significant, adverse financial impact on the Medicare, Medicaid, or Federal health care programs; (b) constitutes more than an isolated instance where there was a failure to comply with Applicable Laws, this Agreement, or the policies or procedures contained in the Compliance Manual, regardless of financial impact on the Medicare, Medicaid, or other Federal health care programs; or (c) has an adverse effect on the quality of care provided to program beneficiaries, including, but not limited to, information that suggests or indicates that the testing was not performed properly.

25. If, at the conclusion of the internal inquiry of any suspected material violation of the Applicable Laws, HAC/HA identifies an overpayment amount, resulting from billings for the Garden Grove facility, owed to a Medicare, Medicaid, or any Federal health care program, but determines that there are no

grounds to conclude that a material violation has occurred, HAC/HA shall, within ten (10) days, undertake appropriate corrective actions to eliminate the cause of the overpayment(s) and make restitution of the overpayment amount (including interest, as required by the program) to the appropriate program. If, after investigation of a suspected violation of the Applicable Laws by one of the Americair franchises, which results from the compliance and audit activities described herein, or from other information, there is identified an overpayment resulting from billings for one of the Americair franchises, but there is a determination that there are no grounds to conclude that a material violation has occurred, HAC/HA will notify the Americair franchise of the overpayment and will report such information to the appropriate program within ten (10) days, and, within the same period, institute corrective measures. HAC/HA will also report in its annual report with respect to HAC/HA and any Americair franchise:

- (a) the cause of the overpayment; (b) the calculation of the overpayment (including the methodology used to arrive at this amount); (c) the actions taken to correct the cause of the overpayment; (d) proof that the overpayment was refunded (including interest as required by the program), or, as applicable, that the overpayment was properly reported; and (e) any further steps to be taken to address the cause of the overpayment and prevent it from recurring in the future.



26. If, at the conclusion of the internal inquiry, HAC/HA determines that there are reasonable grounds to conclude that a material violation has occurred, HAC/HA shall, with ten (10) days, undertake all appropriate actions as set forth in paragraph 25, including corrective action and restitution or reporting. HAC/HA shall also report, within twenty (20) days, to the OIG: (a) its findings concerning the material violation; (b) the calculation of any overpayment (including the methodology used to arrive at the amount); (c) proof that the overpayment was refunded (including interest as required by the program), or properly reported; (d) the actions taken to correct such material violation; and (e) any further steps which are to be taken to address such material violation and prevent it from recurring in the future. This report is required if a material violation is discovered at HAC/HA or any of the Americair franchises. Failure to submit such a report will be considered a breach of this Agreement. To the extent the material violation relates to activities that suggest improper testing by individuals or entities other than HAC/HA or any Americair Franchise, then, the only duty shall be to report any information available to the OIG within twenty (20) days.

#### K. Annual Reports

27. HAC/HA will annually submit a report (the "Annual

Report") to the OIG describing the measures taken by HAC/HA to implement and ensure compliance with this Agreement. The first such report shall be submitted no later than four (4) months after the anniversary of the effective date of this Agreement, and annually thereafter for the term of this Agreement for a total of five submissions.

28. The Annual Report shall include, among other things, the following:

- a. a summary of the compliance-related activities undertaken during the preceding year and the activities undertaken to comply with the terms of this Agreement;
- b. copies of the documents, notices, instructions, reports and revisions to the Compliance Manual prepared by or for HAC/HA during the preceding year to ensure compliance with this Agreement and compliance with all Applicable Laws;
- c. copies of the schedules and training materials used in training and education programs provided to covered individuals;
- d. verification that all covered individuals have signed the certification statement described in paragraph 11, and have received the applicable compliance training described in paragraphs 17-19;

- e. audit reports and certifications as required by paragraphs 22 and 23;
- f. a list of the number and type of calls made to the Hot Line within the previous year, including the information required under paragraph 16;
- g. a brief description of all investigations of alleged violations or misconduct performed during the previous year pursuant to paragraphs 24-26;
- h. the Standards of Conduct and a summary of all disciplinary actions taken against covered individuals for violations of compliance-related policies and procedures or applicable laws;
- i. a description of actions taken by HAC/HA during the preceding year to assist Americair franchises with compliance-related activities;
- j. any changes in HAC/HA's corporate executive officers and directors, the Compliance Committee, the Compliance Officer and the Compliance Liaisons which occurred during the year;
- k. the addition or elimination of any Americair franchises, including the Medicare supplier number of any Americair franchise which has been added to the network or has left the network;
- l. certification by the Compliance Officer that, to

the best of his/her knowledge, HAC/HA is in compliance with the terms of this Agreement; and

m. any other documents or reports required by this Agreement and not specifically enumerated in this paragraph.

L. Other Reports to the OIG

29. In addition to the Annual Reports required herein, HAC/HA shall notify the OIG within ten (10) days of the time HAC/HA received notice of, or becomes aware that, any Americair franchise has received notice of: (a) the initiation of any criminal, civil, or administrative investigation of HAC/HA or Americair franchise by any governmental entity; (b) receipt of subpoenas by HAC/HA or any Americair franchise from any state or Federal governmental entity; (c) receipt of search warrants by HAC/HA or any Americair franchise, and/or searches carried out in HAC/HA facilities or Americair franchises by any state or Federal governmental entity; or (d) the disposition of legal action against HAC/HA or Americair franchises that affects the ability to adequately provide services to Medicare beneficiaries or Medicaid recipients, but only to the extent that such investigation, subpoena, search warrant or search, or disposition of a legal action, described in subparagraphs (a) through (d), involves the possible violation of the Applicable Laws by HAC/HA or Americair

franchises. HAC/HA shall instruct each franchise of this reporting requirement and require the Compliance Liaison to report any action that falls within the ambit of this paragraph, to the Compliance Officer within ten (10) days.

**M. New Franchises**

30. HAC/HA will notify the OIG of the addition of any franchise to the Americair Network, its address, provider number, and the DMERCs that cover that franchise's territory. This notification shall occur within ten (10) days of the signing of a Franchise Agreement for a new Americair franchise. Within sixty (60) days of the date when a new Americair franchise begins operations, HAC/HA will provide training and support for compliance-related activities for the new franchise, as set forth in this Agreement for existing franchises.

**N. Retention of Records**

31. HAC/HA will maintain any documents, reports, certifications, and all supporting documentation required by this Agreement for a period of six (6) years. HAC/HA shall request that each franchise also maintain such documentation for the same period. Upon request, HAC/HA will provide copies of any document to the OIG within ten (10) days.

### III.  OIG RIGHT TO INSPECT

In addition to any other right that the OIG might have by statute or regulation, upon reasonable notice, the OIG or any duly authorized representative may examine all non-privileged books, records, and other HAC/HA documents for the purpose of verifying HAC/HA's compliance with the terms of this Agreement and Applicable Laws. The OIG shall also be entitled, upon reasonable notice, to inspect all records required to be generated and maintained pursuant to this Agreement, and the OIG shall be allowed to copy such documents and retain any such copies, or to request, receive, and retain copies of such documents from HAC/HA. Further, for purposes of this provision, and upon reasonable notice, the OIG or any duly authorized representative may interview any HAC/HA employee who consents to be interviewed at the employee's place of business during normal business hours or at such other place and time as may be mutually agreed upon between the employee and the OIG. Each employee shall be advised by the OIG or any duly authorized representative prior to any such interview that the employee may elect to be interviewed with or without an attorney or a representative of HAC/HA present. The decision of any employee not to be interviewed by any government representative shall not be deemed to be a breach of this Agreement.

#### IV. NOTICE REGARDING HAC/HA MANAGEMENT AND AMERICAIR FRANCHISES

Within forty-five (45) days of the effective date of this Agreement, HAC/HA shall submit to the OIG a list of the members of HAC/HA management responsible for compliance, including the identities of its corporate executive officers and directors, the Compliance Committee, the Compliance Officer, and the Compliance Liaison at each Americair franchise. HAC/HA agrees to send updated information to reflect changes in the position or identity of personnel responsible for compliance. Such information shall be reported within ten (10) days of a change in HAC/HA personnel, and in the annual report with respect to the rest of the franchises.

Attached hereto, as attachment 1, is a list of all current franchises, their addresses, Medicare supplier numbers, and the DMERC or DMERCs used by each franchise.

#### V. NOTICE AND OPPORTUNITY TO CURE BREACH

In the event that the OIG believes that HAC/HA is in breach of one or more of its obligations under this Agreement, the OIG shall give HAC/HA written notice by certified mail specifying the nature and extent of the alleged breach. HAC/HA will have thirty (30) days from receipt of the notice of breach to: (a) fully cure the breach; or (b) otherwise satisfy the OIG that: (1) it is in

compliance with the Agreement; or (2) that the breach cannot be reasonably cured within thirty (30) days, but that HAC/HA has commenced action to cure the breach and is pursuing such action diligently.

#### VI. EXCLUSION OR SUSPENSION FROM PROGRAMS

If, after thirty (30) days, as provided in Section V, the OIG believes that HAC/HA is in material breach of any provision of this Agreement, the OIG may declare HAC/HA to be in default of this Agreement and may seek to exclude or suspend HAC/HA from participation in the Medicare, Medicaid, or other Federal health care programs, until such time as HAC/HA has fully cured the material breach or otherwise satisfied the OIG that it is in compliance. A material breach means: (a) a failure to abide by a significant term of this Agreement (some of which are specifically identified in particular paragraphs); and/or (b) a failure to abide by the OIG's instructions to cure multiple minor breaches; as set forth in Section V.

An exclusion pursuant to this section shall be deemed an exclusion pursuant to 42 U.S.C. § 1320a-7(b)(7). Upon notification by OIG of its intent to exclude or suspend HAC/HA from participation, HAC/HA is entitled to pre-exclusion due process as afforded a provider under 42 U.S.C. § 1320a-7(f). Notwithstanding any provision of Title 42 of the United States



Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for exclusion or suspension based on the material breach of this Agreement shall be: (a) whether HAC/HA was in material breach of one or more of its obligations under this Agreement as specified in the notice given to HAC/HA; (b) whether such material breach was continuing on the date on which OIG notified HAC/HA of its proposal to exclude; and (c) whether HAC/HA failed to cure the material breach or otherwise satisfy OIG within thirty (30) days after receiving notice from OIG under Section V. OIG shall bear the burden of proof in a proceeding conducted pursuant to this section.

Subsequent to the Administrative Law Judge's decision to exclude or suspend HAC/HA, HAC/HA shall be excluded, regardless of any appeal pending, and must then apply for reinstatement under 42 C.F.R. §§ 1001.3001-1001.3004. The parties further agree that, except as otherwise provided in this Agreement, the procedures governing administrative review of OIG's determination to seek exclusion or suspension, as set forth by 42 C.F.R. Parts 1001 and 1005, are applicable.

#### VII. NOTICES REQUIRED HEREUNDER

The Annual Report and all other reports, notices, or information required hereunder shall be in writing and delivered or mailed by registered or certified mail, postage prepaid, as

applicable to:

HAC/HA:

Tom Frank  
Americair  
1301 Dove Street  
Suite 200  
Newport Beach, CA 92660  
(714) 250-7002

Office of the Inspector General:

Office of Counsel to the Inspector General  
Civil Recoveries Branch - Compliance Unit  
Office of the Inspector General  
U.S. Department of Health and Human Services  
Cohen Building Room 5527  
330 Independence Avenue, S.W.  
Washington, D.C. 20201  
(202) 619-2078

VIII. COSTS OF IMPLEMENTATION

HAC/HA agrees that all costs, as defined in FAR 31.205-47, incurred on behalf of HAC/HA, the Americair franchises, or any covered individual arising from, related to, or in connection with this Agreement, shall be unallowable for Medicare, Medicaid, or other Government contract accounting purposes. HAC/HA agrees to account separately for such costs, and shall treat these costs as unallowable costs for Government contract accounting purposes.

IX. PRIVILEGES MAINTAINED

HAC/HA contends that the attorney-client privilege and the attorney work product doctrine may attach to certain information,

documents, communications, notes, memoranda, recordings, or detailed descriptions of interviews, or other information related to the subject matter of this Agreement. HAC/HA presently intends to preserve this privilege and doctrine to the extent permitted by law, and the OIG recognizes that HAC/HA may assert them, to the extent they may exist. Further, a claim that the privilege or doctrine applies is not considered a defense to noncompliance nor as a defense to an action for breach. The OIG reserves the right to contest the asserted applicability of the privilege and/or doctrine in any given instance. Nothing in the Agreement, including the submission of reports, documents, or other information pursuant to this Agreement, is intended as, constitutes, or shall be construed as a waiver of HAC/HA's attorney-client, work product, or other privileges and rights, including rights it may have under the Freedom of Information Act ("FOIA"). The OIG specifically agrees that it will not contend that HAC/HA's production of any reports or their underlying documents, or the furnishing of additional information relating to this Agreement, constitutes a waiver of the attorney-client privilege and work product doctrine as may be applicable.

#### X. CONFIDENTIALITY

The confidentiality of all documents and other information provided by HAC/HA in connection with its obligations under this

Agreement shall be maintained by the OIG except to the extent disclosure is required by law. Nothing in this Agreement shall be construed to prohibit the OIG from providing information to any other department or agency of the United States Government, or its representatives or agents or to any State, provided that any such entity receiving such information shall be advised by the OIG of the confidentiality provisions of this Agreement. The OIG recognizes that certain information submitted to it under this Agreement may constitute trade secrets or confidential commercial or financial information within the meaning of section 552(b) of FOIA, 5 U.S.C. § 552(b)(4). HAC/HA shall identify all records that it contends falls within this section. To the extent the OIG determines that records submitted fall within the ambit of this exemption, OIG agrees to follow its pre-disclosure notification procedures set out in 45 C.F.R. § 5.65 with respect to such records. These procedures include prior notice to HAC/HA of any potential release of records under the FOIA and an opportunity to provide information as to why the information is exempt under 5 U.S.C. § 552(b)(4). HAC/HA will also be given advance notice to the address set forth herein, if OIG decides that any such information is not exempt under section 552(b)(4).

This Agreement does not constitute, and shall not be construed as, an admission by any person or entity, with respect to any issue of law or fact. The performance under this Agreement

of any of the obligations of HAC/HA, including the submission of documents and reports required by this Agreement, does not constitute, and shall not be construed as, an admission by any person or entity, with respect to any issue of law or fact.

#### XI. SUCCESSORS

The duties and obligations of this Agreement shall apply to all successors, transferees, and assigns, unless the sale of the entity is to an unrelated party who independently qualifies for, and obtains a new supplier number, and, as applicable, is no longer a Home Americair Franchise.

#### XII. Modifications

This Agreement may not be changed, altered or modified, except in writing signed by all parties.

This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto affix their signatures.

HOME AMERICAIR OF CALIFORNIA


HOME AMERICAIR

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Thomas E. Frank President  
of HAC and HA

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Dated: 3/2/98

By:   
Lewis Morris  
Assistant Inspector  
General for Legal Affairs

Approved as to form but not content:

Dated: \_\_\_\_\_

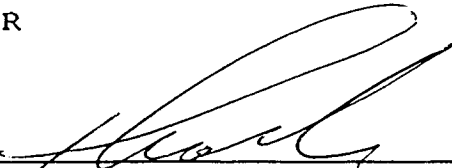
By: \_\_\_\_\_  
Byron Gross  
Hooper, Lundy & Bookman,  
Inc.  
Watt Plaza, Suite 1600  
1875 Century Part East  
Los Angeles, CA 90067-2799  
310) 551-8125

IN WITNESS WHEREOF, the parties hereto affix their signatures.

HOME AMERICAIR OF CALIFORNIA

HOME AMERICAIR

Dated: March 30, 1998

By:   
Thomas E. Frank President  
of HAC and HA

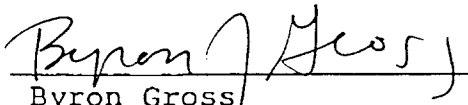
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Assistant Inspector  
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Dated: March 30, 1998

By:   
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